No. 73-6935

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IN THE SUPREME COURT OF THE UNITED STATES

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OCTOBER TERM, 1974

MARCEL YOUAKIM and LINDA YOUAKIM, ET AL., APPELLANTS

v.

JEROME MILLER

ON APPEAL TO THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

This memorandum is submitted in response to this Court's order of October 15, 1974, inviting the Solicitor General to present the views of the United States.

STATEMENT

The State of Illinois has a policy whereby it makes a substantial foster care (AFDC-FC) payment pursuant to the federal Aid to Families with Dependent Children (AFDC) program when children are placed in a foster home with persons who are not related, pursuant to a judicial determination that the children's original home is unsuitable for them. If, however, the persons providing the foster care in such circumstances are related to the children, Illinois denies them foster care payments, unless they can show a need therefor. The foster family may qualify for AFDC payments, which in Illinois are less than the AFDC-FC payments.

Appellants in this case are foster parents caring for children related to them, and the children themselves. They brought a class suit in the United States District Court for the Northern District of Illinois, contending that the Illinois practice of providing higher payments when the foster parents are unrelated to the children violates the Social Security Act and the Equal Protection Clause. A three-judge district court rejected these contentions and dismissed the suit (J.S. App. A).

ARGUMENT

We submit that the Illinois policy of denying foster care AFDC benefits for children living with relatives is invalid because it conflicts with specific criteria for eligibility set forth in the Social Security Act; and that the validity of this practice is a substantial question in the administration of the Social Security Act which warrants plenary review by this Court.

1. In order to qualify for AFDC benefits, a child must be a "dependent child" as defined in 42 U.S.C. 606(a). Under that definition, a child is dependent if it (1) has been deprived of parental support for specified reasons, (2) is living with a relative as defined in the section, and (3) is under 18 (or, in certain circumstances 21) years of age.[1/] The AFDC foster care program is provided under 42 U.S.C. 608, which expanded the definition of "dependent child" to include certain

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1/ 42 U.S.C. 606(a) provides:

> When used in this part---
>
> (a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or
> (Continued)

children who, even though not living with relatives, live in foster homes as a result of a judicial determination that they should be removed from their regular homes.[2/]

1/ (Continued)

> physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocation or technical training designed to fit him for gainful employment.

2/ 42 U.S.C. 608(a) provides:

> Effective for the period beginning May 1, 1961 --
>
> (a) the term "dependent child" shall, notwithstanding section 606(a) of this title, also include a child (1) who would meet the requirements of such section 606(a) or of section 607 of this title except for his removal after April 30, 1961, from the home of a relative (specified in such section 606(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child, (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 602 of this title, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f)(1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 602 of this title, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in
> (Continued)

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A child is eligible for AFDC-FC if it (1) is a "dependent child" as defined in Section 608(a); (2) lives in a "foster family home" or a "child-care institution" as a result of a judicial determination that the child's home is not suitable for him (Section 608(f)); and (3) meets other conditions of Section 608, not in issue here.

Appellants concededly meet all of these conditions, and therefore qualify for AFDC-FC. The additional requirement imposed by the State of Illinois that children are entitled to AFDC-FC only if the foster home in which they are living is maintained by non-relatives is contrary to the decisions of this Court which have prohibited the states from narrowing specific federal eligibility criteria without congressional authorization. Townsend v. Swank, 404 U.S. 282, 286; Carlson v. Remillard, 406 U.S. 598, 601; King v. Smith, 392 U.S. 309, 333.[3/]

3/ (Continued)

> which court proceedings leading to such determination were initiated, or (B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 606(a) of this title within 6 months prior to the month in which such proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefore.

3/ There have been several cases in which the state has been permitted to impose additional requirements as conditions of eligibility for AFDC. Snell v. Wyman, 393 U.S. 323, affirming 281 F. Supp. 853 (S.D. N.Y.); Wyman v. James, 400 U.S. 309; Charleston v. Wohlgemuth, 405 U.S. 970, affirming 332 F. Supp. 1175 (E.D. Pa.); New York State Department of Social Services v. Dublino, 413 U.S. 405. The requirements upheld in those cases, however, were designed to further the purposes of the Social Security Act, such as seeking employment, permitting a home visit by social workers, or agreeing to reimburse the state for assistance (Continued)

Appellees argue (Motion to Dismiss or Affirm, p. 15) that because the Social Security Act "indicates that children ought to be placed, when their return to their natural home is rendered impossible, in the home of a relative, and only thereafter in the home of a stranger * * * the law considers relatives of a child on a nearly equal basis with natural parents." From this they conclude that the state may treat children in foster homes of relatives as if they were still living with their parents, and therefore deny them foster-care payments. The argument is a non sequitur.

As already noted, the only qualification for foster-care benefits is that the child be "dependent" and that it be living in a foster home or a child-care institution as the result of a judicial determination that its own home is unsuitable. Those conditions were satisfied here, and the child is therefore entitled to foster-care benefits.

Appellees' argument, rather than supporting their conclusion, points in the opposite direction. The denial of foster-care benefits to children living with relatives is likely to make relatives unwilling to accept the children and lead to the placement of children in foster homes of non-relatives. This result would be inconsistent with the policy stated in 42 U.S.C. 601 that the AFDC program is aimed at "encouraging the care of dependent children in their own homes or in the homes of relatives * * *." Indeed, this policy was the primary basis upon which a

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3/ (Continued) received if funds therefor become available. Here, on the other hand, the Illinois system excludes from benefits a class of children who meet the statutory qualifications and, as shown infra, (p. 5), the disqualifying condition of living with a relative is opposed to rather than in furtherance of the design of the Social Security Act.

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district court invalidated, as inconsistent with the Social Security Act, the practice of South Dakota of denying foster-care payments for children living with relatives. Clampett v. Madigan, No.CIV73-4018, decided May 24, 1973 (D. S.D.). See, also, Jackson v. Ohio Department of Public Welfare, No. C72-182, decided April 17, 1972 (N.D. Ohio).

Appellants contend that Ramos v. Montgomery, 331 F. Supp. 1157 (S.D. Cal.), affirmed, 400 U.S. 1003, controls this case. That case, however, merely held that where a child was not eligible for foster-care benefits because he did not meet the condition in Section 608 that he had been removed from his home as a result of a judicial determination, the foster parents were not entitled to receive foster-care payments. The present case, however, involves the totally different situation where the child does qualify for foster-care payments but the state denies those payments because relatives provide the foster care.

2. The question is an important one in the administration of the Act. We are informed by the Department of Health, Education and Welfare that in addition to Illinois, 13 other states currently deny full foster-care payments to foster parents caring for related children. Approximately 28 percent of AFDC recipients are living in those states. The issue thus has substantial impact, and warrants definitive resolution by this Court.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.

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